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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 424

WALKER WOOD, SECRETARY OF STATE, ET AL.,
APPELLANTS,

vs.

S. C. BROOM, APPELLEE.

REPLY BRIEF FOR APPELLANTS.

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The question involved is a political one. The question involved in this case is not appellee's right to vote for candidates for the House of Representatives nor neither does it involve his right to become such a candidate himself. He may exercise either or both rights. He asserts the right, however, to become a candidate for Congress on a state-wide instead of a district ticket. He asserts the right to vote for candidates for the House of Representatives running on a state-wide and not a district ticket by reason of an injunction issued from the Equity side of the District Court of the United States in the court below. Such election is now being conducted in accordance with appellee's contention.

Appellee's counsel cite no cases holding that this suit is a judicial and not a political question. The

cases cited divide themselves into two classes. *Nixon* v. *Herndon,* 273 U. S. 536, and *Wiley* v. *Sinkler,* 179 U. S. 58, 45 L. Ed. 84, cases where there was a deprivation of the plaintiff's right under the Constitution and the Acts of Congress to vote for a member of Congress and this Court held that an action at law for damages was maintainable. The second class of cases cited by appellee's counsel is *Ex parte Siebold,* 100 U. S. 371; *Ex parte Yarbrough,* 110 U. S. 651; *United States* v. *Moseley,* 238 U. S. 383, each of which were cases where the defendants were indicted for violating the Act of Congress prohibiting persons from conspiring together to deprive any person of any of the rights, privileges or immunities granted under the Constitution of the United States. Nor neither does the case of *Smiley* v. *Holm,* 285 U. S. 355, support appellee's contention. In that case which was an appeal from an action of mandamus from the Supreme Court of Minnesota this Court held that the State of Minnesota had not adopted any Congressional redistricting act whatsoever and that such an act cannot become a law without the signature of the Governor of the State. Nor neither does the case of *Moran* v. *Bowley,* 179 N. E. 536, support appellee's contention. The Supreme Court of Illinois held that in view of the fact that public moneys were about to be expended for the payment of which the complaining party would be subject to taxation that the suit was maintainable in Equity and upon the judicial nature of the controversy the Supreme Court of Illinois held that irrespective of the Act of Congress under its own Constitution equality of representation

was required and that such right was invaded in the particular case.

We call your Honors' attention to the case of *Brumfield* v. *Brock,* 142 So. 745, where the Supreme Court of Mississippi affirmed that such a controversy was political and not judicial in character; that the plaintiff had no property rights involved for that elections would have to be held regardless on account of the necessity for electing other persons and that the amount imposed upon the complaining party was so small as not to justify a Court of Equity in taking jurisdiction. The reasoning in that case as well as the facts stated are applicable to the present controversy.

Counsel for the appellee, however, seek to justify the jurisdiction of the Court by reference to the 14th paragraph, Section 41, Title 28 of the U. S. C. A., defining the jurisdiction of Federal Courts. The following language is used, "of all suits at law or in Equity authorized by law to be brought, etc.," from which it would appear that the Act of Congress was to confer no new jurisdiction either at law or Equity. The suit in order to be brought in Equity must be one authorized to be brought and the only suits mantainable in a Federal Court of Equity under the Constitution of the United States are such as were had under the Equity system prevailing in England at the time of the adoption of the Constitution of the United States.

Counsel, however, contend that the appellee was without an adequate remedy at law and therefore a Federal Court of Equity should take jurisdiction on the principle that Equity will afford a remedy where

the remedy at law is inadequate. However, in cases of a political nature as will appear from the many cases cited in our original brief a Court of Equity affords no remedy. The remedies provided are (*a*) an adequate remedy at law, (*b*) a legislative remedy, and (*c*) the right of appeal to the electorate. Appellee has the right to vote for Congressmen, there is no discrimination on account of race or color, therefore no civil right guaranteed by the Constitution is involved.

We will not attempt to distinguish the several citations from State Courts. The Supreme Court of each State is the final judge of the jurisdiction which it will exercise and as to whether or not the controversy involves a property right or is political in nature. In many States, however, all distinctions between law and equity have been abolished so that it would not be helpful to the court to attempt to distinguish these cases. The following cases, however, are a few out of a very large number which hold that the matter of redistricting a State is an administrative matter peculiarly within the jurisdiction of the State Legislature. The right of courts to inquire into the same in many cases denied and in others the courts hold that the act of the Ligislature in redistricting a State is conclusive except in instances of flagrant abuse. *State ex rel. Meighen* v. *Weatherill,* 125 Minn. 336; *People ex rel. Carter* v. *Rice,* 135 N. Y. 473; *People ex rel. Woodyatt* v. *Thompson,* 155 Ill. 451; *In Re Baird,* 142 N. Y. 523; *State ex rel. Warson* v. *Howel,* 92 Wash. 540; *Wise* v. *Bigger,* 79 Va. 269, and *Richardson* v. *McChesney,* 128 Ky. 363, 108 S. W. 322, 129 A. S. R. 299.

Rights Asserted under the 14th Amendment to the Constitution of the United States.

We understand from the brief prepared by appellee's counsel that no longer is any insistence had of the fact that the appellee and other persons similarly situated are taxpayers. There is no longer any contention made that in cases of $3,000 is involved. The appellee does not any longer contend that he has the right under the injunction granted to be or become a candidate for the House of Representatives. As we understand appellee's brief, while it asserts that the redistricting act passed by the legislature of the State of Mississippi complained of, violates the Act of Congress, that the appellee bases his right to equitable relief upon the 14th Amendment to the Constitution of the United States, the appellee's claim being as we gather the same from the argument contained in the brief, that under the 14th Amendment to the Constitution of the United States appellee and other persons, whether registered voters or not, are, under the 14th Amendment to the Constitution of the United States, entitled to equal representation in the House of Representatives and that owing to the alleged inequality of the Districts created by the Legislature of Mississippi, 1932, the appellee and other persons are denied rights and immunities claimed under the 14th Amendment to the Constitution of the United States.

At the outset, we would call the attention of the court to the fact that the appellee is a registered voter and no other person has joined in the bill other than himself. Therefore the appellee can only present the question as to whether or not as a qualified elector

having the right to vote, the redistricting act of the State of Mississippi violates the 14th Amendment to the Constitution of the United States. The appellee cannot present the rights of persons in a different class from himself. See the case of *McCabe* v. *Railway Co.*, 235 U. S. 151; *Little* v. *Tanner*, 208 Fed. 605 (Rev. other grounds, 240 U. S. 369). The original bill of complaint does not allege and the appellee has not contended that as to qualified voters and electors there is discrimination or any lack of equality. Be that as it may, however, we respectfully submit that the right of a qualified elector or the inhabitant of a Congressional District in a State is not entitled under the 14th Amendment to the Constitution of the United States to equality in representation with other Districts throughout the State. No case is cited by appellee's counsel to the effect that the 14th Amendment to the Constitution of the United States of itself requires that Congressional Redistricting Acts of a State be equal as to inhabitants unless it be the three-judge Kentucky case, which decision cites no authoritative cases in support of the enunciation. It is, of course, elementary that since the appellee has brought his suit before a three-judge District Court of the United States the jurisdiction must rest upon the unconstitutionality of a State statute and not the alleged violation by the State statute of a Federal Statute.

There is a complete compliance with the 14th Amendment to the Constitution of the United States where there exists no inequality as to residence of the separate districts. The following cases are directly in point. *Bowman* v. *Lewis*, 101 U. S. 22; *Hayes* v.

Missouri, 120 U .S. 71; *McPherson* v. *Blacker*, 146 U. S. 1; *Martin Ocampo* v. *United States*, 234 U. S. 91, wherein the following language was used:

> "It is contended that since Act No. 612 denies to the inhabitants of Manila the right to a preliminary examination which is accorded to all other people in the Islands, it denies the equal protection of the laws guaranteed by the Act of Congress. But it was long ago decided that this guaranty does not require territorial uniformity. In *Missouri* v. *Lewis* (*Bowman* v. *Lewis*), 101 U. S. 22, 30, 25 L. Ed. 989, 992, this Court (by Mr. Justice Bradley) said:
>
> "'The last restriction of the Fourteenth Amendment as to the equal protection of the laws, is not violated by any diversity in the jurisdiction of the several courts as to subject-matter, amount or finality of decision, if all persons within the territorial limits of their respective jurisdictions have an equal right, in like cases and under like circumstances, to resort to them for redress. Each State has the right to make political subdivisions of its territory for municipal purposes, and to regulate their local Government. As respects the administration of justice, it may establish one system of courts for cities and another for rural districts, one system for one portion of its territory and another system for another portion. Convenience, if not necessity, often requires this to be done, and it would seriously interfere with the power of a State to regulate its internal affairs to deny to it this right. We think it is not denied or taken away by anything in the Constitution of the United States, including the Amendments thereto.'
>
> "And see *Hayes* v. *Missouri*, 120 U. S. 68, 72, 30 L. Ed. 578, 580, 7 S. Ct. Rep. 350; *Chappell*

Chem. & Fert. Co. v. *Sulphur Mines Co.*, 172 U. S. 474, 43 L. Ed. 520, 19 S. Ct. 268; *Mallett* v. *North Carolina*, 181 U. S. 589, 598, 45 L. Ed. 1015, 1020, 21 S. Ct. Rep. 730, 15 Am. Crim. Rep. 241."

See also case of *Ohio ex rel.* v. *Akron Metrop. Park District*, 281 U. S. 74.

We respectfully submit however that where a State has been redistricted by act of the Legislature of the State that equality in inhabitants is not required by the 14th Amendment to the Constitution of the United Sates. Supposing that Congress had made no decennial reapportionment following the 1930 Census. Owing to the increase in population inequality would exist in some of the Districts. The court would be without power to compel Congress to reapportion the States on the basis of representatives if the position of the appellee be correct. Then if an existing State redistricting law by reason of the failure of Congress to act and by reason of increasing population brought about unequal representation, the then existing redistricting Act would violate the 14th Amendment to the Constitution of the United States. We respectfully submit that the position is not sound.

Respectfully submitted,

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